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**DIGEST OF OTHER RECENT VIRGINIA DECISIONS.**

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**Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

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**HONAKER LUMBER CO. v. CALL.**

March 16, 1916. Rehearing Denied June 27, 1916.

[89 S. E. 506.]

**1. Master and Servant (§ 296 (8)\*)—Injuries to Servant—Liability—Contributory Negligence—Instructions.**—Defendant lumber company operated a standard gauge railroad for the transportation of its lumber and occasionally and for accommodation, but not as a common carrier, hauled freight for residents along the road. Plaintiff conductor was the only conductor engaged in hauling freight cars. It was customary for him to get his orders from the station agent at the terminus and he received orders as to a certain car that it should be carried only to station 1 and not over the mountain, as it was unsafe. He hauled the car to station 1 and there dropped it. On the following day, it had been reloaded by the agent at station 1, who had no authority to change the orders given by the terminus agent, with instructions to haul it over the mountain. Plaintiff started to haul it, riding on top of it, and when it was derailed through the defect of which he had been warned, was injured. Held, that an instruction predicated recovery on whether he had received written orders to carry it over the mountain was erroneous, since it pretermitted his contributory negligence in hauling the car after actual warning and knowledge that it was defective and dangerous.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 1185; Dec. Dig. § 296 (8).\* 9 Va.-W. Va. Enc. Dig. 703.]

**2. Trial (§ 296 (4, 5)\*)—Injuries to Servant—Instructions—Cure.**—In such case an instruction so predicated recovery was not cured by a modification precluding recovery if the servant had notice that the car was unsafe.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 709; Dec. Dig. § 296 (4, 5)\* 7 Va.-W. Va. Enc. Dig. 744.]

**3. Appeal and Error (§ 216 (3)\*)—Preservation of Exceptions—Bill of Exceptions—Certificate of Court—Effect.**—The fact that the court certified that no amendment, written or otherwise, to an instruction

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

was made or asked, does not deprive the defendant of his right to complain on appeal of error in the instruction.

[Ed. Note.—For other cases, see Appeal and Error, Dec. Dig. § 216 (3); Trial, Cent. Dig. §§ 627, 629.\* 1 Va.-W. Va. Enc. Dig. 563.]

**4. Trial (§ 423\*)—Injuries to Servant—Cure of Error.**—Where the court erroneously instructed predicated recovery on whether the servant had written orders to move a car, the error was not cured by permitting counsel to argue that plaintiff could not recover if he knew the car was defective, since that excluded the issue whether he should have known that it was defective.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 984, 986; Dec. Dig. § 423.\* 7 Va.-W. Va. Enc. Dig. 744.]

**5. Master and Servant (§ 281 (5)\*)—Injuries to Servant—Liability—Contributory Negligence—Evidence.**—Evidence held sufficient to warrant a conclusion that the plaintiff knew or ought to have known of the defect of the car which he hauled contrary to instructions, so as to preclude his recovery for injuries caused by defect in car.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 989; Dec. Dig. § 281 (5).\* 9 Va.-W. Va. Enc. Dig. 725.]

**6. Master and Servant (§ 289 (19)\*)—Injuries to Servant—Liability—Actions—Questions for Jury.**—Whether a servant failed to exercise ordinary care for his own safety in not remembering notice that a certain car was unsafe, and was therefore guilty of contributory negligence, held for the jury.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 1110; Dec. Dig. § 289 (19).\* 9 Va.-W. Va. Enc. Dig. 726.]

**7. Appeal and Error (§ 730 (1)\*)—Review—Presentation of Exceptions—Sufficiency.**—A mere allegation that refusal of certain instructions and modification of another was error, without pointing out the error, is insufficient to present a question for review.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3013, 3016; Dec. Dig. § 730 (1).\* 1 Va.-W. Va. Enc. Dig. 502.]

**8. Master and Servant (§ 296 (13)\*)—Injuries to Servant—Actions—Instructions.**—Refusal of a requested instruction that plaintiff servant could not recover if he failed to get instructions not to haul the car across the mountains placed in the usual place, held error under the evidence.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 1190; Dec. Dig. § 296 (13).\* 9 Va.-W. Va. Enc. Dig. 710.]

**9. Master and Servant (§ 229\*)—Injuries to Servant—Care Required of Servant.**—A servant is under as great obligation to provide for his own safety from dangers known to him or discoverable by ordinary care on his part as the master is to provide for him, and negligence

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

of the master does not excuse the servant's negligence if it was the proximate cause of the injury.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 674, 683; Dec. Dig. § 229.\* 16 Va.-W. Va. Enc. Dig. 851.]

**10. Appeal and Error (§ 362 (2)\*)—Assignment of Error—Sufficiency.**—Assignment of error that defendant is advised that errors were committed to its prejudice by rulings of the court on questions propounded to witnesses, is insufficient to meet the requirement that a petition for a writ of error, being in the nature of a pleading, must state clearly the errors relied on for reversal.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 1961; Dec. Dig. § 362 (2).\* 1 Va.-W. Va. Enc. Dig. 503.]

**11. Appeal and Error (§ 843 (2)\*)—Review—Matters Not Necessary to Decision.**—Where the judgment must be reversed on account of error in giving and refusing instructions, it is unnecessary to consider an assignment of error that the judgment was contrary to the evidence.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 1961; Dec. Dig. § 843 (2).\* 1 Va.-W. Va. Enc. Dig. 539.]

Error to Circuit Court, Russell County.

Action by D. W. Call against the Honaker Lumber Company. Judgment for plaintiff, and defendant brings error. Reversed. verdict set aside, and cause remanded for new trial.

*Chas. M. Brown*, of Roanoke, *Burns & Kelly*, of Lebanon, and *Greever & Gillespie*, of Tazewell, for plaintiff in error.

*Wm. H. Werth*, of Tazewell, for defendant in error.

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SANDS, Commissioner in Chancery, *v.* MOORE Auditor.

Sept. 11, 1916.

[89 S. E. 846.]

**1. Statutes (§ 125 (6)\*)—Title and Subject.**—Act March 27, 1914 (Acts 1914, p. 707), limiting salaries of officers, does not contravene Const. 1902, § 52, providing that no law shall contain more than one object, which shall be expressed in the title.

[Ed. Note.—For other cases, see Statutes, Cent. Dig. § 190; Dec. Dig. § 125 (6).\* 12 Va.-W. Va. Enc. Dig. 751.]

**2. Municipal Corporations (§ 124 (6)\*)—Officers—Compensation—Limitation—Statute.**—Proviso of Act March 27, 1914 (Acts 1914, p. 709) § 10, that provisions of the act limiting compensation of officers shall not be effective till expiration of the terms of present incum-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.